

Judge Franklin D. Burgess

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENJAMIN J. GERVAIS,

Defendant.

NO. CR01-5572FDB

EXPEDITED SETTLEMENT  
AGREEMENT RE: REAL PROPERTY  
LOCATED AT 1215 SOUTH FIFE,  
TACOMA, WASHINGTON

IT IS HEREBY STIPULATED by and between the Plaintiff, United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Richard E. Cohen, Assistant United States Attorney for said District, and Claimant, Washington Mutual Bank, FA, by and through Kelly Sutherland, its counsel, to compromise and settle claimant's petition with respect to the subject real property located at 1215 South Fife, Tacoma, Washington, more particularly described in Exhibit A (hereinafter "the subject real property"), according to the following terms:

1. The parties to this agreement hereby stipulate that the use of the subject real property to facilitate the distribution of a controlled substance, to wit, marijuana, in violation of Title 21, United States Code, Section 841, occurred without the knowledge or consent of Washington Mutual.

2. Plaintiff and petitioner Washington Mutual agree that upon sale of the subject real property by the United States Marshals Service pursuant to entry of a Final Judgment of Forfeiture, and after payment of expenses of custody and sale incurred by the United States

Marshals Service, the following shall be paid to claimant, Washington Mutual from the proceeds of the sale of the subject real property:

a. All unpaid principal due to Washington Mutual in the amount of \$63,367.83 as of March 31, 2004, pursuant to the mortgage instrument dated January 1, 2000, which was secured by a deed of trust recorded January 5, 2000, in the official record of Pierce County, State of Washington, as document #200001050740, and as fully described in the Petition and Verified Claim by Washington Mutual on file herein.

b. All unpaid interest at the base contractual rate of 8.75% under the above mortgage instrument totaling \$4,614.27 as of March 31, 2004, plus additional interest assessed at \$15.19 per diem until the date of payment; and,

c. Other fees and costs totaling approximately \$4,428.82 through March 31, 2004, as follows:

Escrow advances	\$1,041.79
Accrued Late Charges	686.10
Property Inspections	15.20
Other fees/advances	49.00
Bankruptcy fees/costs	650.00
Foreclosure fees/costs	<u>1,986.73</u>
<b>TOTAL</b>	<b><u>\$4,428.82</u></b>

3. This Settlement Agreement and payment to Washington Mutual is conditioned upon the United States' prevailing against any competing claims.

4. The payment to Washington Mutual shall be in full settlement and satisfaction of any and all claims by Washington Mutual to the subject real property named in the above-captioned forfeiture action and all claims, resulting from the incidents or circumstances giving rise to this forfeiture action, except as specified in paragraph 6 below.

5. Upon payment, Washington Mutual agrees to assign and convey its security interest to the United States of America via recordable documents and to release and hold harmless the United States, and any agents, servants, and employees of the United States (and any involved state or local law enforcement agencies and their agents, servants, or employees), in their individual or official capacities, from any and all claims by Washington Mutual and its

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agents that currently exist or that may arise as a result of the Government's actions against and relating to the subject real property.

6. As a part of this settlement, Washington Mutual agrees for a period of six (6) months from the date this agreement is filed with the Court, not to pursue against the United States any other rights it may have under the Deed of Trust, including but not limited to the right to initiate/continue a foreclosure sale. Washington Mutual has agreed to discontinue the Trustee Sale scheduled for March 26, 2004.

7. Washington Mutual understands and agrees that by entering into this Expedited Settlement of its interest in the above described property, Washington Mutual waives any rights for the six (6) months from the date this agreement is filed with the Court to further litigate its interest in the property and to petition for remission or mitigation of the forfeiture. Upon approval of this agreement by the Court, unless specifically directed by an order of the court, Washington Mutual shall be excused and relieved from further participation in this action.

8. Washington Mutual understands and agrees that the United States reserves the right to void the expedited settlement agreement if, before payment of the mortgage or lien, the United States Attorney obtains new information indicating that the mortgagee or lienholder is not an "innocent owner" or "bona fide purchaser" pursuant to the applicable forfeiture statutes. In the event the United States obtains any such information, the United States Attorney also reserves the right, in its discretion, to terminate the forfeiture at any time and release the subject property. In either event, the Government shall promptly notify Washington Mutual of such action. A discretionary termination of forfeiture shall not be a basis for any award of fees under Title 28, United States Code, Section 2465.

9. Washington Mutual agrees to execute further documents, to the extent necessary, to convey clear title to the property to the United States and to implement further the terms of this settlement. Each party agrees to bear its own costs and fees, except as expressly set forth herein.

10. Payment to Washington Mutual pursuant to this settlement agreement is contingent upon forfeiture of the subject property to the United States, the United State's prevailing over

any other third-party claims, the Court's entry of a final order of forfeiture, and sale of the subject property, pursuant to the final order of forfeiture.

Respectfully submitted,

JOHN McKAY  
United States Attorney

Dated May 3, 2004

s/Richard E. Cohen  
RICHARD E. COHEN  
Assistant United States Attorney  
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Seattle, Washington 98101-3903  
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[Richard.E.Cohen@usdoj.gov](mailto:Richard.E.Cohen@usdoj.gov)

Dated May 5, 2004

s/Kelly Sutherland  
KELLY SUTHERLAND  
Attorney for Washington Mutual  
Shapiro & Kreisman  
201 NE Park Plaza Drive, Ste 150  
Vancouver, WA 98684  
360/260-2253 ext. 381; fax 360/260-2285  
[KellyS.wa@logs.com](mailto:KellyS.wa@logs.com)

**ORDER**

This Stipulated Expedited Settlement Agreement between the United States of America and Washington Mutual is hereby approved.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

Presented by:

\_\_\_\_\_  
s/Richard E. Cohen  
RICHARD E. COHEN  
Assistant United States Attorney  
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Seattle, Washington 98101-3903  
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\_\_\_\_\_  
s/Kelly Sutherland  
KELLY SUTHERLAND  
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[KellyS.wa@logs.com](mailto:KellyS.wa@logs.com)

**EXHIBIT A**

**LEGAL DESCRIPTION**

The North 40 feet of the South 80 feet of Lots 5, 6, and 7 in Block 3 of BETHELL'S FIRST ADDITION TO TACOMA, W.T., as per plat recorded in Volume 4 of Plats, page 53, Records of Pierce County Auditor; situate in the City of Tacoma, County of Pierce, State of Washington

Parcel No. 249500-014-0

COMMONLY KNOWN AS: 1215 South Fife, Tacoma, Washington